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No. 227

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED MINE WORKERS OF AMERICA, ET AL.,
PETITIONERS

v.

ARKANSAS OAK FLOORING COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement:	
A. The events leading up to the instant suit	3
B. The instant suit	4
Summary of argument	7
Argument:	
The National Labor Relations Act precludes state court injunctive relief notwithstanding the union's noncompliance with the Act's filing requirements	10
A. Under the Act, a union's noncompliance with Sections 9 (f), (g), and (h) disables it from using Board processes; it does not make recognition of that union unlawful, or otherwise remove activity involving it from the field regulated by the Act	10
B. The activity here is therefore governed by the same principles as would be applicable were the union in compliance with Sections 9 (f), (g), and (h), and under those principles the state court was barred from acting	20
Conclusion	25
Appendix	27

CITATIONS

Cases:

Aetna Freight Lines, Inc. v. *Clayton, et al.* (C. A. 2, decided December 13, 1955, No. 23631) 23

resentative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state court has jurisdiction to relieve. . . .

SUMMARY OF ARGUMENT

A. A union's noncompliance with the filing requirements of Sections 9 (f), (g), and (h) of the National Labor Relations Act disables it from invoking the processes of the National Labor Relations Board. As the relevant decisions hold, noncompliance does not alter the substantive requirements of the Act but denies the union standing to utilize Board facilities. In general, the Act regulates the labor relations between an employer and a noncomplying union no less than it does between employers and other labor organizations. If a noncomplying union engages in unfair labor practices violative of Section 8 (b) of the Act, it may be subjected to a Board remedial order. Moreover, the Board and the courts of appeals have held that it is not unlawful for an employer, voluntarily, to grant recognition to a noncomplying union, nor does it expressly limit the employer's bargaining obligation to unions which have satisfied the statutory filing requirements.

Even though a union may not be in compliance with Sections 9 (f), (g), and (h) when its request to bargain is made, this does not excuse the employer's obligation to bargain if the union in fact represents a majority of the employees; upon compliance, the cases hold, the union may in appropriate circumstances invoke the Board's processes to remedy the employer's prior refusal to discharge that obligation.

The Board and the courts have also held that the rights guaranteed to employees in Section 7 of the Act—"to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection"—are not necessarily qualified by the filing requirements. A union which fails to comply cannot obtain the help of the Board in establishing itself with an employer but noncompliance does not affect whatever rights it and its adherents may have under the Act to use traditional economic weapons for the purpose of gaining recognition. The contrary conclusion of the court below—that the effect of noncompliance is to make it unlawful for a union to resort to traditional economic weapons in support of its demand for recognition and for the employer to recognize the union—apparently rests on the erroneous premise that, absent a Board certification, an employer cannot legally recognize a union

Cases—Continued

	Page
American Communications Association v. *Douds*, 339 U. S. 382	12
Automobile Workers v. *O'Brien*, 339 U. S. 454	20, 23
Bus Employees v. *Wisconsin Board*, 340 U. S. 383	20, 23
Chicago Typographical Union No. 16, 86 NLRB 1041	12
Sigmund Cohn Mfg. Co., Inc., 75 NLRB 177	11
Denver Bldg. & Const. Trades Council, 90 NLRB 1768	24
Douds v. *Local 50, Bakery, etc. Workers International Union*, AFL, 224 F. 2d 49	19
Fay v. *Douds*, 172 F. 2d 720	11
Garner v. *Teamsters Union*, 346 U. S. 485	6, 20, 23
Harris Foundry & Machine Co., 76 NLRB 118	12
Hill v. *Florida*, 325 U. S. 538	21, 22
Jonesboro Grain Drying Cooperative, 110 NLRB 481	3
Joy Silk Mills, Inc. v. *National Labor Relations Board*, 185 F. 2d 732, certiorari denied, 341 U. S. 914	19
Kearney & Trecker Corp., 113 NLRB No. 113, 36 LRRM 1422	24
Leach d/b/a Brookville Glove Co., 114 NLRB No. 52, 36 LRRM 1548	14, 16, 18, 21
Lebanon Steel Foundry v. *National Labor Relations Board*, 130 F. 2d 404, certiorari denied, 317 U. S. 659	18
Herman Loewenstein, Inc., 75 NLRB 377	11
Meat Cutters v. *Johnson*, 36 LRRM 2511 (July 13, 1955)	23
Medford Bldg. & Const. Trades Council, 96 NLRB 165	24
National Labor Relations Board v. *Augusta Chemical Co.*, 187 F. 2d 63	21
National Labor Relations Board v. *Bradford Dyeing Association*, 310 U. S. 318	18
National Labor Relations Board v. *Clausen*, 188 F. 2d 439, certiorari denied, 342 U. S. 868	21
National Labor Relations Board v. *Coal Creek Coal Co.*, 204 F. 2d 579	16

Cases—Continued Page

National Labor Relations Board v. *Dant*, 344 U. S. 375 17

National Labor Relations Board v. *Electronics Equipment Co., Inc.*, 194 F. 2d 650 16

National Labor Relations Board v. *Knickerbocker Plastic Co.*, 218 F. 2d 917 18

National Labor Relations Board v. *Kobritz*, 193 F. 2d 8 18

National Labor Relations Board v. *Pecheur Lozenge Co.*, 209 F. 2d 393, certiorari denied, 347 U. S. 953 14

National Labor Relations Board v. *Pratt, Read & Co.*, 191 F. 2d 1006 15

National Labor Relations Board v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, certiorari denied, 346 U. S. 887 14

National Labor Relations Board v. *Tennessee Egg Co.*, 201 F. 2d 370, reversing 199 F. 2d 95 14

National Maritime Union v. *Herzog*, 78 F. Supp. 146, affirmed, 334 U. S. 854 11

New Jersey Carpet Mills, 92 NLRB 604 17

Perry Norvell Company, 80 NLRB 225 24

Ohio Ferro-Alloys Corp. v. *National Labor Relations Board*, 213 F. 2d 646 16

Rubin Bros., 99 NLRB 610 15

Stewart-Warner Corp. v. *National Labor Relations Board*, 194 F. 2d 207 16

Weber v. *Anheuser-Busch*, 348 U. S. 468 ..... 20, 21

West Texas Utilities Co. v. *National Labor Relations Board*, 184 F. 2d 233, certiorari denied, 341 U. S. 939 ..... 14, 17

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 602, 29 U. S. C. 151, *et seq.*):

Section 7 ..... 8, 9, 10, 20, 23, 24, 29

Section 8 (a) (1) 29

Section 8 (a) (2) 29

Section 8 (a) (3) 30

Section 8 (a) (4) 31

Statute—Continued Page
National Labor Relations Act, as amended—Con.
Section 8 (a) (5) 13, 31
Section 8 (b) 7, 10, 12, 23
Section 8 (b) (1) 31
Section 8 (b) (2) 31
Section 8 (b) (4) 11, 12, 31
Section 9 (a) 33
Section 9 (c) 12
Section 9 (f) 7, 8, 10, 12, 13, 16, 22, 33
Section 9 (g) 7, 8, 10, 12, 13, 16, 22, 34
Section 9 (h) 7, 8, 10, 12, 13, 16, 22, 35
Section 13 36
Miscellaneous:
93 Cong. Rec. 1844, 1846, 1935, 3425, 3449, 3528, 3636, 3660, 3667, 3838, 4431, 4436, 4840, 4905, 7533 22
H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 17, 23
H. R. 3020, 80th Cong., 1st Sess., Sec. 12, in 1 Leg. Hist. of the Labor-Management Relations Act, 1947, 78–79 23
Hearings before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, 80th Cong., 1st Sess., 228, 474–476, 492, 548–549, 704–705, 710–711, 723, 993, 1884–1885 22
Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess., 282, 347–348, 552–553, 1858 22
N. L. R. B., Nineteenth Annual Report (G. P. O. 1955), 96 19
Report of the Joint Committee on Labor Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 70–71 ..... 17, 19, 23
S. Rep. No. 105, 80th Cong., 1st Sess. 22 17

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OPINIONS BELOW

The trial court issued no written opinion; its judgments granting preliminary and permanent injunctions are set forth at R. 17, 65. The opinion of the Supreme Court of Louisiana, set forth at R. 69–85, is reported at 227 La. 1109, 81 So. 2d 413.

JURISDICTION

The opinion, judgment and decree of the Supreme Court of Louisiana was entered April 25,

1955 (R. 69), and a petition for rehearing was denied May 31, 1955 (R. 101). The petition for certiorari was filed July 12, 1955, and granted October 17, 1955 (R. 101). 350 U. S. 860.[1] The jurisdiction of this Court rests upon 28 U. S. C. 1257 (3).

QUESTION PRESENTED

The National Labor Relations Board's interest in this case is limited to a single question, namely, whether peaceful picketing by employees and their union of the premises of an employer subject to the National Labor Relations Act, for the purpose of obtaining recognition for the union which has membership cards from a majority of the employees, may be enjoined by a state court where the union, because it has not filed the financial data and the non-Communist affidavits required by Sections 9 (f), (g) and (h) of the Act, is not entitled to use the procedures of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in the Appendix, pp. 29–36, *infra*.

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[1] In granting certiorari, this Court invited the Solicitor General to file a brief setting forth the views of the National Labor Relations Board (R. 101). 350 U. S. 860.

STATEMENT

A. THE EVENTS LEADING UP TO THE INSTANT SUIT

Respondent, whose principal offices are in Pine Bluff, Arkansas, operates a sawmill and flooring plant at Alexandria, Louisiana, where it is engaged in the manufacture of lumber and oak flooring. It is admittedly engaged in interstate commerce (R. 24–27, 41–42, 69), and thus subject to the National Labor Relations Act.[2]

Toward the end of 1953, District 50 of the United Mine Workers started an organizational drive among the employees at respondent's Alexandria plant (R. 47–50, 70). By February 1954, about 174 of the plant's 225 employees had signed membership cards authorizing the union to represent them for purposes of collective bargaining (R. 16–17, 22, 31, 36, 51).[3] Moreover, the em-

[2] The record shows that at least 20 percent of the raw materials used by the Alexandria plant come from, and that about 90 percent of its finished product are delivered, out-of-state: also, the Alexandria plant is under the direction of the company's offices in Pine Bluff, Arkansas (R. 25, 38, 58), and is part of a multi-state enterprise. In addition, a report on the Company obtained from Dun & Bradstreet shows that, for the year ending December 31, 1954, its total net sales were approximately $6,000,000 (see also R. 43). In these circumstances, it seems clear that the company's business would satisfy the Board's current standards for the assertion of its jurisdiction. See *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

[3] Subsequently, the union obtained 5 more cards, making a total of 179. Union organizer Ledbetter testified, without contradiction, that all the signatures on the cards were those of employees at the plant (R. 55).

ployees who joined the union had in effect set up a local within the plant, electing officers and stewards (R. 30, 50).

About February 23, the union employees met after working hours and unanimously authorized James Ledbetter, the District 50 organizer, to request recognition from the Company (R. 30, 52). The next day, Ledbetter presented his credentials to Assistant Plant Superintendent Fowler, told him that the union represented a majority of the employees, and requested recognition as the employees' bargaining representative. Fowler replied that since the union was not "recognized" by the National Labor Relations Board he would not recognize it. (R. 31, 53–54, 58–59, 70.) Ledbetter reported back to the employees, who voted to strike for recognition on March 1, 1954 (R. 32–33, 54, 56–57).

On that date, a peaceful picket line of employees was set up in front of respondent's plant. Two pickets at a time paraded with signs stating: "This plant is on strike"; "We want recognition, District 50, UMWA." (R. 29, 32, 55.)

B. THE INSTANT SUIT

On March 2, 1954, respondent filed the instant suit for injunctive relief in a Louisiana trial court, naming as defendants the United Mine Workers, organizer Ledbetter, and 11 of the striking employees (R. 2–7, 28–29). The suit rested on the following alternate theories: (1) the pur-

pose of the picketing was to force the Company to recognize a union not selected by the employees, which would interfere with employee rights contrary to Louisiana law (R. 4–5, pars. 9–10); or (2) if the union represented a majority, the picketing was an unlawful interference with the Company's business because the union, due to its noncompliance with the filing requirements of the national Act, could not be recognized as a bargaining agent (R. 4, par. 8). Upon the filing of the suit, the court issued a temporary restraining order, enjoining all of the defendants from picketing respondent's plant (R. 7–8).

After hearings, the trial court, on March 25, 1954, converted the restraining order into a preliminary injunction (R. 17–18), and then, on June 24, 1954, into a permanent injunction (R. 65–66). The defendants had contested this action on the ground, *inter alia,* that the state court lacked jurisdiction because the relief requested would either remedy an unfair labor practice under the national Act or interfere with activity protected thereby (R. 10, 13, 63–64). Upon the entry of the injunction, they appealed both the preliminary and permanent decrees to the Supreme Court of Louisiana (R. 18, 66–68). On April 25, 1955, that court entered a decision sustaining the lower court (R. 69–83).

The Supreme Court of Louisiana found that "the picketing was engaged in for the sole pur-

pose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board" because of its noncompliance with Sections 9 (f), (g), and (h) of the National Labor Relations Act, as amended. "This," the court stated, "is clearly not an act denounced as an unfair labor practice by the amendment of 1947." (R. 73–74.) On this basis, the court distinguished *Garner* v. *Teamsters Union,* 346 U. S. 485, pointing out that the activity sought to be restrained there "was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union—an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act" (R. 73).

The court then rejected the union's contention that, despite its noncompliance with Sections 9 (f), (g), and (h), the picketing for recognition was protected by the national Act. The court reasoned as follows (R. 80):

> It necessarily follows that inasmuch as the Union in the instant case has . . . failed and refused to comply with the provisions of Sections 9 (f), (g) and (h) . . . the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the rep-

even though it may have majority status. But the union's majority status may be established by membership cards, without a Board election. The absence of a Board certification does not affect the union's right to persuade the employer voluntarily to accept its card proof of majority status and recognize and bargain with it. Nor does the absence of certification affect the legitimacy of the union's drive for recognition. It affects only the union's right to invoke Board sanctions in support of its effort to obtain recognition.

B. The Union's compliance or lack of compliance with the filing requirements is therefore irrelevant to the question of the state court's power to enjoin the picketing in the instant case. This question turns, as in prior cases before this Court, on whether the conduct is comprehensively covered by the national Act, either as an unfair labor practice, as conduct affirmatively protected under Section 7, or as activity deliberately left to the free play of economic forces, so that imposition of the state's remedy impairs or conflicts with the federal regulatory scheme. The instant injunction does create such a conflict.

If the union had majority status, the picketing by the employees in support of its demand for recognition constitutes, in the Board's view, activity within the protection of Section 7 of the Act. State restraint upon such activity is clearly barred by the Act, for a state may not prohibit

the exercise of rights which the federal Act protects.

Assuming, however, that the union did not have majority status, the picketing, as we read this Court's decisions, would nonetheless be closed to state regulation. Congress, as this Court has pointed out, has given detailed consideration to the problem of peaceful picketing for recognition or organization purposes by, or on behalf of, a union representing none or a minority of the employees. It proscribed such activity only when it entailed the form and objectives specified in Section 8 (b). In these circumstances Congress may be deemed to have preempted control over the activity in its entirety, whether it be viewed as an unfair labor practice under the Act or as activity within the protection of Section 7 or neither.

ARGUMENT

THE NATIONAL LABOR RELATIONS ACT PRECLUDES STATE COURT INJUNCTIVE RELIEF NOTWITHSTANDING THE UNION'S NONCOMPLIANCE WITH THE ACT'S FILING REQUIREMENTS

A. UNDER THE ACT, A UNION'S NONCOMPLIANCE WITH SECTIONS 9 (f), (g), AND (h) DISABLES IT FROM USING BOARD PROCESSES; IT DOES NOT MAKE RECOGNITION OF THAT UNION UNLAWFUL, OR OTHERWISE REMOVE ACTIVITY INVOLVING IT FROM THE FIELD REGULATED BY THE ACT

Sections 9 (f), (g) and (h) of the National Labor Relations Act provide that, if a labor organization and its affiliates fail to file operational and financial statements with the Secretary

of Labor and to furnish certain financial information to their members, and if their officers fail to file non-Communist affidavits, the following consequences follow: (1) the National Labor Relations Board may not investigate a question concerning representation raised by the labor organization; (2) it may not issue a complaint pursuant to a charge filed by the labor organization; and (3) the labor organization may not enter into a valid union-shop agreement. By thus closing the Board's processes to noncomplying unions, while leaving them open to unions in compliance, noncomplying unions incur serious disadvantages. If the employer with whom the noncomplying union seeks to negotiate engages in unfair labor practices, the union may not have them redressed by the Board, nor may it have its status as exclusive representative verified by a Board certification.[4] The inability to obtain a Board certification, in turn, deprives the noncomplying union of the right to engage in a secondary boycott for purposes of forcing recognition (Section 8 (b) (4) (B)), or a strike to force the assignment

[4] This is so irrespective of whether the noncomplying union itself files the representation petition, it is filed by the employer, or the petition has been filed by a complying union and the noncomplying union thereafter intervenes in the proceeding. See *Herman Loewenstein, Inc.*, 75 NLRB 377; *Sigmund Gohn Mfg. Co., Inc.*, 75 NLRB 177, 180, n. 2; *National Maritime Union* v. *Herzog*, 78 F. Supp. 146, 156 (D. D. C., 3-judge court), affirmed, 334 U. S. 854; *Fay* v. *Douds*, 172 F. 2d 720, 724–726 (C. A. 2).

of work which it might otherwise do if the employer were "failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work" (Section 8 (b) (4) (D)), and also deprives it of the protection which a certification would give it against a primary strike for recognition by a rival union (Section 8 (b) (4) (C)). See *American Communications Association* v. *Douds*, 339 U. S. 382, 390, n. 6.

Generally, however, the Act regulates labor relations between an employer and a noncomplying union no less than between employers and other labor organizations. If a noncomplying union engages in conduct violative of Section 8 (b), the provision defining unfair labor practices on the part of a labor organization or its agents, a Board remedial order may issue against it.[5] Moreover, the Board and the courts of appeals have held that it is not unlawful under the Act for an employer, voluntarily, to grant recognition to a noncomplying union, nor does it expressly limit the employer's bargaining obligation to unions which have complied with Sections 9 (f), (g) and (h). Thus, Section 8 (a) (5) declares it to be an unfair

[5] See *Chicago Typographical Union No. 16*, 86 NLRB 1041, 1048, remedying a refusal by a noncomplying union to bargain in good faith, as required by Section 8 (b) (3).

A noncomplying union may also be the subject of a decertification petition under Section 9 (c) (1) (A) (ii). *Harris Foundry & Machine Co.*, 76 NLRB 118.

labor practice for an employer "to refuse to bargain collectively with the representative of his employees, *subject to the provisions of section 9 (a)*" (emphasis added); the latter section defines representative as any person selected by a majority of the employees in an appropriate unit, without regard to compliance with the Act's filing requirements. Accordingly, it has been uniformly held—and the court below apparently overlooked these rulings—that, even though a union may not be in compliance with Sections 9 (f), (g) and (h) when its request to bargain is made, this does not excuse the employer's obligation to bargain if the union in fact represents a majority of the employees, and upon compliance with the statutory filing requirements the union may in appropriate circumstances invoke the Board's processes to remedy, as an unfair labor practice violative of Section 8 (a) (5) of the Act, the employer's prior refusal to discharge that obligation. "* * * Congress has not made compliance with the filing requirements of § 9 (f), (g) and (h) a condition precedent to the obligation of an employer under § 8 (a) (5) to bargain collectively with the chosen representative of the employees; such compliance is merely made a condition precedent to invoking the machinery of the Act for the investigation of a question concerning representation, or for the issuance of a complaint charging the commission

of unfair labor practices." *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 133–134 (C. A. 1), certiorari denied, 346 U. S. 887. *Accord: West Texas Utilities Co.* v. *National Labor Relations Board*, 184 F. 2d 233, 239 (C. A. D. C.), certiorari denied, 341 U. S. 939; *National Labor Relations Board* v. *Pecheur Lozenge Co.*, 209 F. 2d 393, 402–403 (C. A. 2), certiorari denied, 347 U. S. 953; *National Labor Relations Board* v. *Tennessee Egg Co.*, 201 F. 2d 370 (C. A. 6), reversing 199 F. 2d 95.

Similarly, the Board and courts of appeals have held that the rights guaranteed to employees in Section 7 of the Act—"to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection"—are not conditioned upon compliance with Sections 9 (f), (g) and (h). Thus, in *Leach d/b/a Brookville Glove Co.*, 114 NLRB No. 52 (October 6, 1955), 36 LRRM 1548, a situation very similar to that here, the Board held that a strike to compel recognition for the noncomplying United Mine Workers, which had obtained signed cards from a majority of the employees, was activity protected by Section 7 of the Act, and that consequently the employer's discharge of the strikers violated Section 8 (a) (3) of the Act. Reaffirming its position

in *Rubin Bros.*, 99 NLRB 610, 619, the Board reasoned as follows (36 LRRM at 1549):

> The Act does not proscribe bargaining with a noncomplying union; indeed, consonant with public policy, an employer may voluntarily recognize and deal with such a union. If Congress had intended the Act to have the effect urged by Respondents, it easily could have inserted an express provision in the statute to accomplish such result. This, Congress did not do. While the union in this case could not use the processes of this Board to obtain recognition as bargaining representative in view of its failure to comply with Section 9 (h) of the Act, we are not persuaded that Congress intended to withhold protection of the Act against discrimination from employees simply because they engaged in acts of self-help, otherwise legitimate, as members or adherents of a noncomplying labor organization. Hence we conclude that the strike in this case was a protected concerted activity. [Footnotes omitted.]

This decision is consistent with *National Labor Relations Board* v. *Pratt, Read & Co.*, 191 F. 2d 1006, 1008 (C. A. 2), holding violative of the Act the discharge of six employees for announcing their intention, shortly after the AFL had displaced the then noncomplying CIO as the representative, to campaign for restoration of the

CIO, "since the Act did not forbid voluntary recognition of the CIO as the bargaining agent."[6]

In sum, Sections 9 (f), (g), and (h) seek to achieve Congress' objectives—financial and operational responsibility and freedom from Communist or other subversive influences—by limited procedural measures which deny to the noncomplying union access to the Board's machinery for the investigation of questions concerning representation or for the remedying of unfair labor

[6] *Accord: National Labor Relations Board* v. *Electronics Equipment Co., Inc.*, 194 F. 2d 650, 651, n. 1 (C. A. 2). See also *National Labor Relations Board* v. *Coal Creek Coal Co.*, 204 F. 2d 579, 581 (C. A. 10), sustaining the Board's finding that the discharge of employee Golding, for campaigning on behalf of the noncomplying United Mine Workers, was violative of Section 8 (a) (3).

Ohio Ferro-Alloys Corp. v. *National Labor Relations Board*, 213 F. 2d 646 (C. A. 6), is distinguishable for the reasons noted by the Board in *Brookville Glove*, *supra*: "While the court there held that a strike for recognition by a union, which happened not to be in compliance with Section 9 (h) of the Act [UMW], was not a protected activity, the court based its holding on the ground, absent here, that the union struck to compel recognition *with notice that a rival union had filed a petition for certification with the Board*" (36 LRRM at 1549, n. 1). Nor does *Stewart-Warner Corp.* v. *National Labor Relations Board*, 194 F. 2d 207 (C. A. 4), relied on by the Supreme Court of Louisiana (R. 80–81), detract from our analysis in the text; although there is a portion of the Fourth Circuit's opinion which suggests that an employer is licensed to commit unfair labor practices against adherents of a noncomplying union (p. 210), the court went on to find it unnecessary to "pass upon" this question because the incidents involved occurred outside the limitations period imposed by Section 10 (b) (p. 211).

practices. The method adopted "was to stop the use of the Labor Board" (*National Labor Relations Board v. Daut*, 344 U. S. 375, 385) by those unions which failed to file the specified data and affidavits and "to encourage compliance with the filing requirements of the Act by creating a system of benefits and detriments" (*New Jersey Carpet Mills*, 92 NLRB 604, 610). A union which fails to comply cannot obtain the help of the Board in establishing itself with an employer, but such noncompliance does not, under the Act, deprive it and its adherents of the right to use traditional economic weapons for the purpose of gaining recognition. See *West Texas Utilities Co. v. National Labor Relations Board*, 184 F. 2d 233, 239 (C. A. D. C.), certiorari denied, 341 U. S. 939; also cases cited *supra*, p. 14.[7] To use a common but revealing expression, the Act's filing provisions may give the employer a shield against the use by the union of Board remedies, but they do not give him a sword with which to strike down the union or its otherwise lawful activities.

The contrary conclusion of the Supreme Court of Louisiana—that the effect of noncompliance

[7] See also, Report of the Joint Committee on Labor-Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 71: "Present law in no way limits the primary strike for recognition except in the face of another union's certification." *Accord:* S. Rep. No. 105, 80th Cong., 1st Sess. 22; H. Conf. Rep. No. 510, 80th Cong., 1st Sess. 43.

under the Act, is to make it unlawful for a union to resort to traditional economic weapons in support of its demand for recognition and for the employer to recognize the union—apparently rests on an erroneous premise. The court appears to assume that an employer cannot legally recognize a union that has not verified its majority status in a Board election and received a Board certification; since a noncomplying union, not being eligible to use Board processes, cannot obtain a certification (see fn. 4, *supra*), it follows, in the court's view, that such a union could not be legally recognized and hence picketing to compel this objective is necessarily illegal pressure (R. 74–80). However, although an employer may not lawfully recognize as exclusive bargaining agent a union which does not represent a majority, it is well settled that a Board election is not the only method by which an employer may satisfy himself as to the union's majority status.[*] Thus, here, the membership cards (signed by a majority of the employees) possessed by the union would have permitted the Company, as the Board noted in *Brookville Glove*, *supra*, p. 14 (36 LRRM at 1549, n. 4), to grant

[*] See *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 338–339; *Lebanon Steel Foundry* v. *National Labor Relations Board*, 130 F. 2d 404 (C. A. D. C.), certiorari denied, 317 U. S. 659; *National Labor Relations Board* v. *Kobritz*, 193 F. 2d 8, 14 (C. A. 1); *National Labor Relations Board* v. *Knickerbocker Plastic Co.*, 218 F. 2d 917, 921–922 (C. A. 9).

recognition to the union without committing an unfair labor practice. In these circumstances, the fact that the union's majority was not established in a Board election, though it may not, in certain situations, entitle the union to a Board order requiring the employer to bargain with the union, cannot affect the union's right to persuade the employer voluntarily to accept its card proof of a majority and recognize and bargain with it. In short, contrary to the court below, the union's

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[2] It has been generally held that, in the case of a union whose majority claim is not based on a certification, an employer may lawfully refuse to bargain with it, or condition recognition on a Board election, if he challenges the union's majority status in good faith. Conversely, where the employer's assertion of doubt regarding the union's majority status is not made in good faith, the employer's refusal to bargain will be held to be a violation of Section 8 (a) (5). See Nineteenth Annual Report of the National Labor Relations Board (G. P. O. 1955) p. 96; *Joy Silk Mills, Inc.* v. *National Labor Relations Board*, 185 F. 2d 732, 741-742 (C. A. D. C.), certiorari denied, 341 U. S. 914.

But respondent errs in concluding (Br. in Opposition to Petition for Certiorari, 12-13) that an employer who thus initiates a Board test of the complying union's majority status thereby curtails its economic weapons, leaving it with less power than a noncomplying union. It is not at all clear that the Act would preclude a complying union from picketing while the election petition is pending, or that it would have to discontinue the picketing should it lose the election. See Report of the Joint Committee on Labor-Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 70-71; *Meat Cutters* v. *Johnson*, 36 LRRM 2511 (Supreme Court of Kansas, July 13, 1955); *Douds* v. *Local 30, Bakery, &c. Workers International Union, AFL*, 224 F. 2d 49 (C. A. 2).

inability to get certified does not affect the legitimacy of its drive for recognition, but concerns only the question of whether the effort may be aided by Board sanctions.

B. THE ACTIVITY HERE IS THEREFORE GOVERNED BY THE SAME PRINCIPLES AS WOULD BE APPLICABLE WERE THE UNION IN COMPLIANCE WITH SECTIONS 9 (f), (g), AND (h), AND UNDER THOSE PRINCIPLES THE STATE COURT WAS BARRED FROM ACTING

In the light of the foregoing considerations, the union's compliance or lack of compliance with the Act's filing requirements is irrelevant to the question of the state court's power to enjoin the picketing here. This question turns, as in the prior cases before this Court,[10] on whether the conduct is comprehensively covered by the Act—either as an unfair labor practice, as conduct affirmatively protected under Section 7, or as activity deliberately left to the free play of economic forces—so that imposition of the state's remedy impairs or conflicts with the regulatory scheme fashioned by Congress. As we read the decisions of this Court, the instant injunction does create such a conflict and hence is barred by the Act.

Assuming the validity of the membership cards possessed by the union, the strike and the attendant picketing were for the purpose of secur-

[10] E. g., *Garner* v. *Teamsters Union*, 346 U. S. 485; *Weber* v. *Anheuser-Busch*, 348 U. S. 468; *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383.

ing recognition for a union representing a majority of the employees. Such activity, as the Board specifically held in *Brookville Glove* (pp. 14–15, *supra*), is affirmatively protected by Section 7 of the Act.[11] A state restraint upon such activity would thus clearly be barred by the Act, for, as emphasized in *Weber* v. *Anheuser-Busch*, 348 U. S. 468, 474, "a State may not prohibit the exercise of rights which the federal Acts protect."

[11] It is immaterial that *Brookville Glove* only involved the employees themselves (*i. e.*, employees striking for recognition of a noncomplying union were discharged), while here the injunction, in addition to restraining certain of the striking employees, also covered the union and its organizer (pp. 4–5, *supra*). The inclusion of the union does not make the restraints on the employees themselves any less unlawful. Moreover, where employees have designated a union as bargaining agent, they delegate to the agent power to direct many of their concerted activities, including the calling of strikes. Accordingly, imposing a limitation on the union's power to call a strike for recognition is as much a limitation on employee rights as the restraint imposed on the employees themselves. No different conclusion is required by such cases as *National Labor Relations Board* v. *Augusta Chemical Co.*, 187 F. 2d 63 (C. A. 5), and *National Labor Relations Board* v. *Clausen*, 188 F. 2d 439 (C. A. 3), certiorari denied, 342 U. S. 868, which hold that the rights of individual employees are distinct from those of the union in the sense that an employee belonging to or supporting a noncomplying union may obtain Board redress of his own discriminatory discharge, notwithstanding that the union itself could not have secured that remedy on his behalf. These cases merely show that the union and the employee each has a separate right to *remedy* an invasion of the employee's Section 7 rights; this is not inconsistent with the proposition that employee rights may be *abridged* though only the union is literally subject to the restraint. *Hill* v. *Florida*, 325 U. S. 538.

Indeed, by in effect limiting the Company's employees in their choice of a bargaining agent more narrowly than does the Act, *i. e.*, restricting them to an agent which has complied with Sections 9 (f), (g) and (h) of the Act, the state action here is very similar to the Florida requirements, invalidated in *Hill* v. *Florida*, 325 U. S. 538, that the union file certain organizational information and obtain a license as a condition of operating as the representative of employees in the state.

Moreover, even if it be assumed, as the Company suggests, that the cards may not be authentic, so that the strike and the picketing are to obtain recognition for a minority union, the activity, we believe, would nonetheless be closed to state regulation under controlling decisions. Thus, as this Court has held, the legislative history of the Act indicates that Congress gave detailed consideration to the problem of peaceful picketing for recognition or organization purposes by, or on behalf of, a union representing none or a minority of the employees;[12] that it had

[12] See Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22, 80th Cong., 1st Sess., 282, 347–348, 552–553, 1858; Hearings before the House Committee on Education and Labor on Bills to Amend and Repeal the National Labor Relations Act, 80th Cong., 1st Sess., 228, 474–476, 492, 548–549, 704–705, 710–711, 723, 993, 1884–1885; 93 Cong. Rec. 1844, 1846, 1935, 3425, 3449, 3528, 3636, 3660, 3667, 3838, 4431, 4436, 4840, 4905, 7533.

before it proposals that would have outlawed such activity in its entirety;[13] but that the amendments finally adopted proscribed the activity only when it entailed the form and objectives specified in Section 8 (b).[14] In these circumstances, as we read the decisions of this Court (fn. 10, *supra*), Congress may be deemed to have preempted control over the activity in its entirety; those forms which fall short of the restrictions in Section 8 (b) are either encompassed within the affirmative protection of Section 7 or must be viewed as having been deliberately left by Congress to the free play of economic forces. "The detailed proscription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint." *Garner* v. *Teamsters Union*, 346 U. S. 485, 499. *Accord: Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 397–398; *Automobile Workers* v. *O'Brien*, 339 U. S. 454, 456–457; *Aetna Freight Lines, Inc.* v. *Clayton, et al.* (C. A. 2, No. 23631, decided December 13, 1955).

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[13] See Sections 12 (a) (2) and (3) (c) of H. R. 3020, 80th Cong., 1st Sess., in 1 Leg. Hist. of the Labor-Management Relations Act, 1947, 78–79.

[14] See H. Conf. Report No. 510, 80th Cong., 1st Sess., 42–44, in 1 Leg. Hist. 546–548; Report of the Joint Committee on Labor-Management Relations, Committee Print No. 986, Part 3, 80th Cong., 2nd Sess., 70–71; *Meat Cutters* v. *Johnson*, 36 LRRM 2511, 2519–2520 (Supreme Court of Kansas, July 13, 1955.)

Accordingly, assuming *arguendo* that the activity here is on behalf of a minority union, it is unnecessary for purposes of this case to decide whether, on the particular facts presented, it would amount to an unfair labor practice under the Act,[15] or come within the affirmative protection of Section 7.[16] Even if neither is the case, it is nevertheless in the field which Congress has preempted and closed to concurrent state injunctive relief.

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[15] See *Perry Norvell Company*, 80 NLRB 225, 238–241; *Denver Bldg. & Const. Trades Council*, 90 NLRB 1768; *Medford Bldg. & Const. Trades Council*, 96 NLRB 165.

[16] The Board has not yet dealt with this question but cf. the following extract from the opinion of Chairman Farmer (dissenting on other grounds), in *Kearney & Trecker Corp.*, 113 NLRB No. 113, 36 LRRM 1422, 1425 (August 26, 1955):

"I agree that, with appropriate limitations, concerted activity is protected even where a minority is involved. The primary purpose of protecting minority concerted activity is to create that atmosphere of freedom of expression and action necessary for the democratic selection or rejection of a bargaining agent. Its function is to permit organizational activities within the democratic framework of the Statute. * * *

"* * * I would certainly uphold the rights of minorities to engage in activities looking toward securing majority status, including the right to engage in an organizational strike. I would also protect the right of a union which has not yet demonstrated its strength to mount a recognition strike. It is clear to me that Congress intended to preserve these rights."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the injunction issued by the Supreme Court of Louisiana in this case is invalid, and that the judgment below should be reversed.

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